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FEDERAL INSURANCE COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SECOND WALNUT CREEK MUTUAL,)	Case No.: CV08-2874 CW
)	
Plaintiff,)	ORDER GRANTING DEFENDANTS'
)	MOTION TO DISMISS FOR FAILURE
vs.)	TO STATE A CLAIM UPON WHICH
)	RELIEF CAN BE GRANTED (RULE
TRAVELERS PROPERTY CASUALTY)	12(b)(6))
COMPANY OF AMERICA, FEDERAL)	
INSURANCE COMPANY and DOES 1)	Hearing Date: November 6, 2008
through 20, inclusive,)	Time: 2:00 p.m.
)	Courtroom: 2
Defendants.)	


The Court has considered the motion of Defendants Travelers Property Casualty Company of America and Federal Insurance Company to dismiss the complaint of plaintiff Second Walnut Creek Mutual, pursuant to Federal Rule of Civil Procedure 12(b)(6), along with the stipulation executed by plaintiff and defendants granting the motion to dismiss.

Upon having considered the written arguments of defendants and the stipulation of all parties granting the motion to dismiss, and good cause appearing, the Court rules and orders as follows:

1. Defendants' motion to dismiss plaintiff's Complaint for Breach of Contract, Breach of Implied Covenant Of Good Faith And Fair Dealing, Declaratory

1 Relief And Punitive Damages, with prejudice, is granted on the grounds that the
2 complaint fails to state a claim upon which relief can be granted. Defendants'
3 denial of the costs incurred by plaintiff to repair the underground portion of the
4 plumbing system was proper because those costs are excluded under the
5 involved insurance policy, which is attached to the Complaint, and there has
6 been no breach of contract as a matter of law. Furthermore, since the denial of
7 coverage was proper, the facts do not support a claim for breach of the covenant
8 of good faith and fair dealing or punitive damages as a matter of law.
9

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11 DATED: 12/5/08 _____



CLAUDIA WILKEN
JUDGE OF THE UNITED STATES DISTRICT
COURT